

Remarks

This amendment responds to the official action mailed January 18, 2012 and is accompanied by a one month extension under 37 C.F.R. §1.136(a).

Claims 1, 2, 4, 5 and 7-15 are pending. Claim 1 is an independent claim.

Claims 1, 2, 4 and 10-14 were rejected under 35 U.S.C. §103 as obvious from a combination of WO 03/066975 – Malasorti and JP 02013637. Claims 1, 2, 4 and 10-14 also were rejected as obvious from a combination of Malasorti and DE 102004005161A1 – Gransow. In the official action the examiner states with respect to Malasorti in combination with JP '637:

Claims 1-2, 4, 10-14 rejected under 35 U.S.C. 103(a) as being unpatentable over Malasorti in view of JP 02013637. The rejection from the previous office is incorporated herein. Malasorti discloses all of the limitations of the invention except for an interior of the profile. Thus, in an analogous art, JP 02013637 shows in figure 3 the recited limitations, as broadly claimed, "front side and a rear side formed by front and rear walls spaced by an interior of the profile". It would have been obvious to one having ordinary skill in the art at the time the invention was made to include an interior to accommodate a fitting and because a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.

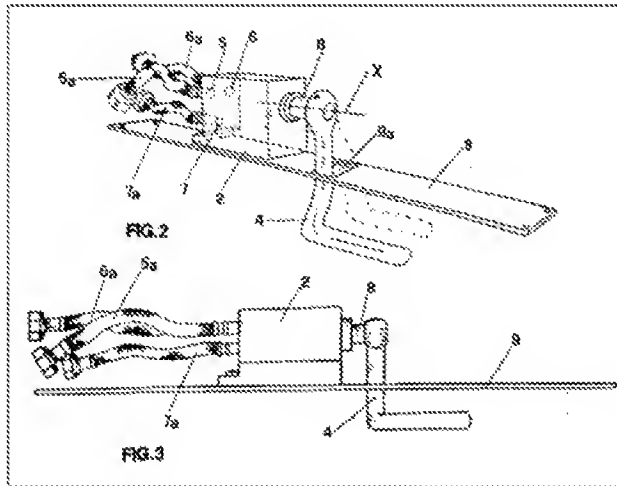
The rejection thus is based on the proposition that a combination of Malasorti and JP '637 would meet the invention claimed as a whole.

There is no basis to conclude that a combination of Malasorti and JP '637 or Gransow would in fact meet the invention as a whole.

Malasorti discloses a solid front plate or cover. A fitting is attached to the rear face of the solid front plate. In Malasorti, item 9 is the part analogous to applicant's profile. Item 9, named as a bearing flange, is a solid plate. This is clearly described and shown in Figs 2 and 3.

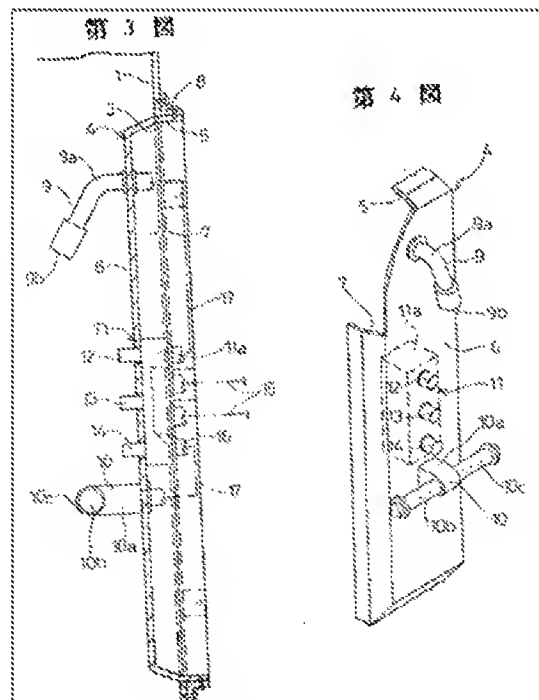
The bearing flange 9, which is plainly a solid plate, is described at page 4, lines 3-14 of Malasorti. The bearing flange is the support for the mixer 2, which is a concealed fitting, and is the cover plate attached to close an embedded box

13 by screws 12, such that the mixer 2 resides in the box 13 below the surface of the wall.



Malasorti

In JP '637, the element 4 that carries the fitting (element 11) is a solid cover plate as shown by its cross hatching in the section view of Fig. 3 (taken along line 3-3 in Fig. 2) and perspective view of Fig. 4.



JP '637

Figs. 2 and 3 of JP '637 show a solid cover plate as opposed to a profile with a space defined between front than back walls. In fact in JP '637, there is nothing in to the rear of the cover plate 4 and fitting 11. The open space behind the solid cover 4 is used for the passage of various pipes.

The examiner states, *"Thus, in an analogous art, JP 02013637 shows in figure 3 the recited limitations, as broadly claimed, "front side and a rear side formed by front and rear walls spaced by an interior of the profile".*"

Reconsideration is requested. JP '637 does not show or disclose the stated subject matter. A combination of Malasorti and JP '637 would not meet the invention claimed as a whole. The combination lacks a flat profile with a front side and a rear side formed by front and rear walls spaced by an interior of the profile, the rear side formed for support on a wall surface.

In the alternative rejection under Section 103 in the official action, the examiner states with respect to Malasorti in combination with Gransow:

Claims 1-2, 4, 10-14 rejected under 35 U.S.C. 103(a) as being unpatentable over Malasorti in view of Gransow DE 102004005161 A 1. The rejection from the previous office is incorporated herein. Malasorti discloses all of the limitations of the invention except for an interior of the profile. Thus, in an analogous art, Gransow shows in figure 12 the recited limitations, as broadly claimed, "front side 4 and a rear side 1 formed by front and rear walls spaced by an interior (space proximate lead line 240a) of the profile". It would have been obvious to one having ordinary skill in the art at the time the invention was made to include an interior to accommodate a fitting and because a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.

Gransow is still another example of a solid plate used as the cover element over a concealed fitting. Fig. 9 shows the solid cover plate ("Deckel") 3 in an exploded view. In that view, and in each of Figs. 11, 12, and 13, which contain elevations or perspectives that show the edges of cover plate 3, the cover plate is a solid plate.



The examiner states in the official action, *“Thus, in an analogous art, Gransow shows in figure 12 the recited limitations, as broadly claimed, “front side 4 and a rear side 1 formed by front and rear walls spaced by an interior (space proximate lead line 240a) of the profile”.*”

Reconsideration is requested. Gransow’s part 1 is the embedded installation box 1 (“Einbaukasten 1”). Element 4 is the surface of the building wall (“Oberfläche der Gebäudewand 4”). The space proximate lead line 240a is the gap between the surface of the building wall and the front of the staff pieces 31, which are generally shaped as channels. Even assuming a combination of Malasorti and Gransow, the result would not meet the invention claimed as a whole. The combination lacks a flat profile with a front side and a rear side formed by front and rear walls spaced by an interior of the profile, the rear side formed for support on a wall surface. The element of the combination analogous to applicant’s profile is a solid cover plate. There is no profile with a hollow internal space.

Furthermore, applicant has amended claim 1 to more particularly and distinctly define the subject matter of the invention and to better distinguish over the prior art of record. According to claim 1 as amended, the flat profile consists essentially of a uniform cross section over an entire length integrally defining a front side and a rear side that are formed by front and rear walls spaced apart by an interior within the profile, the rear side formed for support on a wall surface. This subject matter is supported at page 1, line 22 to page 2, line 3. An integral structure is also consistent with common usage of the term “profile” in connection with extruded profiles, i.e., shapes that are the same along an integral length, with some particular shape in transverse section. See, for example, <http://en.wikipedia.org/wiki/Extrusion>. See also, <http://www.bing.com/search?q=extrusion+profiles&gs=n&form=QBLH&pg=extrusion+profiles&sc=7-18&sp=-1&sk=> (13,800,000 results)

Inasmuch as the references cited in combination do not meet the invention claimed as a whole, the two rejections under Section 103 combining Malasorti with JP ‘637 and Gransow lack adequate support on the record.

Applicant requests that the rejections be reconsidered and withdrawn, and that claim 1 and the claims depending from claim 1 be allowed.

The appropriate application of Section 103 includes assessing the scope of the prior art, the differences between the invention and the prior art, and the level of ordinary skill, applying *Graham v. John Deere* and *KSR v. Teleflex*. According to the official action, apparently applying such standards, *"It would have been obvious to one having ordinary skill in the art at the time the invention was made to include an interior to accommodate a fitting and because a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense."*

Reconsideration is requested. The interior that is recited in the claims is not the interior of a space reserved by an indented part of the building wall or an installation box mounted below the surface of the building wall. Claim 1 as amended positively recites that the profile is structured as an elongated profile with front and rear sides separated by an interior space. The prior art does not disclose using an extruded profile as the covering part of such an installation, let alone the other aspects of claim 1 and its dependent claims, including providing an opening the rear side for a concealed fitting and mounting shower emitting fixtures in the profile as disclosed and claimed. The prior art teaches solid cover plates.

If the person of ordinary skill is seeking to provide a flat shower installation and to provide for shower emitters and knobs for controlling the water flow and temperature, there is no reason to expect that one can achieve any particular benefit or improvement by changing the usual solid cover plate into an extruded profile with an interior. Applicant has determined not only that this arrangement can be accomplished with a thin cover on the installation (Fig. 1), but also has provided for a number of ways in which a profile, unlike a solid cover plate, provides advantages that a skilled person viewing Malasorti, JP '637 and Gransow could not even imagine.

Applicant's profile 1 can be relatively thin (Fig. 1). Applicant exploits the profile structure and its interior that enables a slot 13 to receive a movable showerhead bracket (Fig. 2). The profile complements screw connections with the concealed fitting (Fig. 5). The crossing webs and channels in the profile (Fig. 3) form mounting points for the side showers and the like (Fig. 6) and connectors and water conduits for such elements can be routed through the interior. None of this is found in Malasorti, JP 637 or Gransow. Such provisions are enabled because applicant's profile is an integral continuous profile with an interior and not simply a cover plate.

If a person of ordinary skill knows of a shower installation with a coverplate and wants to provide for controls on the coverplate and perhaps showerheads that emit from the installation, the routine way to proceed is to place any connections and fixtures behind the cover plate. No logical explanation is found on the record or articulated in the official action as to why the person of ordinary skill would consider an attempt to provide an integral extruded profile and to exploit aspects of the profile in any way similar to the invention disclosed and claimed by applicant.

An extruded profile with a hollow interior that contributes to the external thickness is not merely an alternative type coverplate. An extruded profile as a coverplate would routinely be considered likely to present problems and complications, in addition to contributing thickness. There is no reason to regard the invention as just another alternative within the technical grasp of the person of ordinary skill. The invention defined in amended claim 1 as a whole is a true improvement that cannot be deemed within the ordinary knowledge and common sense of a person working in this field.

For the foregoing reasons, claim 1 is properly allowable over the prior art. Claims 5, 7-9 and 15 were rejected over one of the two combinations (either Malasorti combined with JP '637, or Malasorti combined with Gransow) supplemented by US 893,770 - Wilson (with a rear box D that is smaller than the cover); AT 006137 - Neher Bad (with a hand shower); or DE 20211780 - Keramische Werke (with side shower heads).

Claims 5, 7-9 and 15 depend directly or indirectly from independent claim 1 and are allowable together with claim 1 by virtue of dependence. Applicant requests reconsideration and allowance of all the pending claims 1, 2, 4, 5 and 7-15.

The claims have been amended to better define and distinguish the invention from the prior art of record. The differences between the invention and the prior art are such that the subject matter claimed as a whole is not shown to have been obvious. Applicant requests reconsideration and allowance of the pending claims.

Respectfully submitted,

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